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(4)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH

AT BILASPUR

W.P.NO. 692 / 2004

Petitioner : Sheetal Das Mahant S/o Late Shri Dayalu Das Mahant, Aged about 55 years, Ex-Sub Inspector (Police), R/o Village & Post Chaal, Via-Kharsia, Dist : Raigarh-(C.G.)

Versus

Respondents :

1. State of Chhattisgarh Through the Chief Secretary Mantralaya, Home Department, D. K. S, .Bhawan, Raipur-(C.G.)

2. Director General of Police Chhattisgarh, Raipur-(C.G.)

3. Inspector General of Police, Raipur-(C.G.)

4. Dy.Inspector General, Bilaspur-(C.G.)

5. Superintending of Police, Bilaspur-(C.G.)

P.R. No. 683/04
Presented by Shri Bhagat Rajput
dated 01.03.04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 692 of 2004

Petitioner — Sheetal Das Mahant

Versus

Respondents — State of Chhattisgarh and others

Post for order on 08th January, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 692 of 2004

Petitioner — Sheetal Das Mahant

Versus

Respondents — State of Chhattisgarh & others

SB: Hon'ble Mr. Justice Satish K. Agnihotri, J

Shri Bharat Rajput, Advocate for the petitioner.

Shri Sumesh Bajaj, Government Advocate for the respondents.

O R D E R

(Passed on this 8th day of January, 2007)

1. By this petition, the petitioner has challenged the validity of the order dated 27.12.1997 (Annexure P/5) passed by the Superintendent of Police, Bilaspur and the order dated 1.4.2002 (Annexure P/12) passed by the Director General of Police, Raipur.

2. The petitioner was posted as Assistant Sub Inspector at Police Station Shakti Hall - Seepat. The petitioner was issued a show cause notice with charge sheet on 30.11.1997 (Annexure P/3) as under:-

"1- पूर्व में स्पष्ट निर्देश देने के बावजूद मृतिका पक्ष की अनुपस्थिति में शव पंचनामा कर विभागीय निर्देशों की अवहेलना करना।

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2- मर्ग इंटीमेशन के चश्मदीद गवाहों द्वारा घटना देखने से इंकार करने तथा मर्ग इंटीमेशन एवं पोस्टमार्टम में भिन्नता होने के व अपराध घटित होने की स्पष्ट तथ्य होने के बाद भी नियमानुसार अपराध पंजीयन न कर अपने कर्तव्यविमुखता का परिचय देते हुए आरोपियों को लाभ पहूंचाने का प्रयास।

3- उक्त कृत्य कर अपनी आचरण को संदिग्धता की परिधि में लाकर जनता में पुलिस कार्यवाही के प्रति गलत धारणा निरूपित होने का अवसर देना। "

3. The petitioner submitted his reply to the charge sheet on 9.12.1997 (Annexure P/4). One Shri N. P. Singh, Sub Divisional Officer (Police), Mungeli was appointed as Enquiry Officer and the enquiry was properly conducted. All the charges mentioned above were found proved in the enquiry. The Disciplinary Authority i.e. the Superintendent of Police, Bilaspur by his order dated 27.12.1997 (Annexure P/5) passed an order of punishment withholding one increment with cumulative effect for one year.

4. Being aggrieved, the petitioner filed an appeal before the Deputy Inspector General of Police, Bilaspur Division, Bilaspur on 10.2.1998 (Annexure P/6). The Deputy Inspector General of Police by his letter dated 14.9.1998 (Annexure P/7) having considered all the points raised in the appeal and the enquiry report, held that the departmental enquiry was held in accordance with law after affording sufficient opportunity of hearing to the petitioner. The appellate authority accordingly dismissed the appeal.

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5. Being aggrieved, the petitioner filed a revision (review) to the Director General of Police, Madhya Pradesh, Bhopal on 12.9.1999 (Annexure P/8). The Director General of Police by his order dated 5.6.1999 (Annexure P/9) dismissed the revision (review) holding that the punishment awarded appears to be minor in view of the gravity of the offence. The case of the petitioner be revised. Accordingly, the show cause notice dated 5.6.1999 (Annexure P/10) was issued as to why the petitioner be not terminated from service in view of the gravity of the offence committed by him. It appears that the Director General of Police exercised his powers in accordance with the Regulation 270 of the M. P. Police Regulations (for short 'the Police Regulations'), framed under the provisions of the Indian Police Act, 1861.

6. The petitioner submitted his detailed reply (Annexure P/11). The Director General of Police after having considered the reply of the petitioner in exercise of the powers under the Regulation 270 (4) of the Police Regulations, passed the order dated 1.4.2002 (Annexure P/12) of compulsory retirement against the petitioner.

7. The petitioner has filed this petition impugning the order dated order dated 27.12.1997 (Annexure P/5) whereby a minor punishment of withholding of one increment with cumulative effect for one year was passed and the order dated 1.4.2002

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(Annexure P/12), whereby the petitioner was retired from service compulsorily.

8. The main ground of challenge before this Court is that the petitioner was not granted an opportunity of personal hearing before the impugned order dated 1.4.2002 was passed. It was further contended that the Director General of Police has no power to take suo motu revision of the order passed by an authority subordinate to him. Learned counsel for the petitioner also contended that the order impugned was disproportionate to the alleged misconduct committed by the petitioner. It is not the case of the petitioner that there was any irregularity in the departmental enquiry or the petitioner was not given opportunity of hearing, as the impugned order was passed after considering the reply of the petitioner to the show cause notice issued by the Director General of Police on 5.6.1999.

9. Learned counsel for the respondents, per contra, would submit that it is well settled principle of law that this Court would exercise powers of judicial review only to see irregularity, perversity and illegality in the process of decision making, not in the decision itself. It was further contended that the Regulation 270 of the Police Regulations clearly provides for enhancement of the punishment by any authority superior to the authority making the order. In the present case the order imposing minor

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punishment of withholding one increment with cumulative effect for one year was passed by the Superintendent of Police and the same was confirmed by the Deputy Inspector General of Police in appeal. The Director General of Police, who is superior officer to the Superintendent of Police and Deputy Inspector General of Police, has power to take revision suo motu. In the present case, it was found that the order imposed on the petitioner, keeping in view the gravity of the misconduct committed by him, was too less and minor, hence the petitioner deserves a major punishment i.e. dismissal from service. Thus, the Director General of Police after having considered the reply of the petitioner modified the proposed order of punishment and passed the order of compulsory retirement from service.

10. I have heard learned counsel for the parties and perused the records.

11. For proper appreciation of the controversy, it is necessary to quote the Regulation 270 which reads as under:-

> "270. [(1) Every order of punishment of exoneration, whether original or appellate shall be liable to revision sou-motu by any authority superior to the authority making the order].
>
> (2) Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority, on application made in that behalf by the person against whom the order has been passed.

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Explanation.- For the purposes of this clause, the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulations 266, 267, 268 and 271 shall, as nearly as may be, apply to an application for revision.

[(4) The revising authority may for reasons to be recorded in writing exonerate or may remit, vary or enhance the punishment imposed or may order a fresh enquiry or the taking of further evidence in the case :

Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard]."

12. It is not the case of the petitioner that the proper hearing was not afforded to the petitioner in the enquiry. The petitioner has not challenged the enquiry report on any basis that it was perverse or the charges have been found proved on the basis of no evidence or there was any procedural irregularity. As such, the reasonable opportunity, as contemplated by Article 311 (2) of the Constitution of India, in the case of the enquiry was in accordance with the principles of the natural justice. The contention of the petitioner is that the Director General of Police ought to have afforded an opportunity of hearing to the petitioner. The Director General of Police accepted the enquiry report wherein the charges levelled against the petitioner was

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found proved. Only in the question of imposition of punishment the Director General of Police did not agree with the order passed by the disciplinary authority as also confirmed by the appellate authority. The requirement for varying or enhancing the punishment is governed by the provisions of the Regulation 270 of the Police Regulations. The proviso to Regulation 270(4) that the order shall not be varied or reversed unless a notice is served on the party interested or opportunity of being heard is given to him. In the case in hand the opportunity of being heard was given to the petitioner by issuing show cause notice and the petitioner had submitted a detailed reply. Hearing does not mean a personal hearing. Submission of the respondents merits acceptance.

13. The Supreme Court in **Mohd. Rashid Ahmad Vs. State of U.P. and another**[1] observed that it is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. The main requirements of fair hearing are (i) a person must know the case that he is to meet; (ii) he must have an adequate opportunity of meeting that case.

14. This dictum laid down by the Supreme Court has been followed in various decisions. In **Canara Bank and others Vs. Debasis Das and others**[2], the Supreme Court has explained the various

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aspects of principles of natural justice i.e. hearing before passing adverse order, as under:

> "21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constituted the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the perverse of any particular race or country but is shared in common by all men. The first rule is " *nemo judex in causa sua* " or "*nemo debet esse judex in propria causa sua*" as stated in Earl of Derby's case that is, "no man shall be a judge in his own cause". Coke used the form "*aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "*nemo potest esse simul actor et judex*", that is, "no one can be at once suitor and judge" is also at times used. The second rule "*audi alteram partem*", that is, "*hear the other side*". At times and particularly in continental countries, the form "*audietur et altera pars*" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly

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> the audi alteram partem rule, namely "*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see Boswel's case (Co Rep at p. 52-a) {(1605) 6 Co Rep 48b: 77 ER 326} or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

15. In the facts and circumstances of the case and in view of the clear dicta laid down by the Supreme Court in various cases (supra), the petitioner was afforded fair opportunity of hearing and hearing does not mean personal hearing. The petitioner was given sufficient opportunity to put forward his case in reply to the show cause notice issued by the Director General of Police.

16. It is well settled principle of law that this Court while exercising its jurisdiction under Article 226/227 of the Constitution of India has limited jurisdiction to the extent of reviewing the case, in the event, there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

17. The Supreme Court in the case of **V. Ramana Vs. A.P. SRTC and others**[3] after having considered the dicta laid down in B.C. Chaturvedi Vs. Union of India {(1995) 6 SCC 749}, Union of India Vs. G. Ganayutham {(1997) 7 SCC 463} and other cases, observed in para 11, as under:-

> "11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case[4] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

18. In **Ram Saran Vs. IG of Police, CRPF and others**[4], the Supreme Court observed as under:-

> "8. The courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Associated Provincial Picture Houses Ltd. v.

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Wednesbury Corpn. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA) commonly known as Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See V. Ramana v. A.P. SRTC)."

19. It is well settled that the order of compulsory retirement is not a punishment. It implies no stigma. The petitioner belongs to a disciplined force i.e. Police where required standard of conduct is more and far more. The Supreme Court in **State of U.P. and others Vs. Ashok Kumar Singh and another**[5] observed as under:-

"8..... The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observations that "his absence from duty would not amount to such a grave charge". Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the punishment does

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not commensurate with the gravity of the charge" especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

20. The punishment imposed by the Director General of Police does not shock conscience of the court as disciplined force demands strict adherence to the rules and procedures more than any other department. Thus, this Court should not substitute its decision to that of the administrator.

21. After hearing learned counsel for the parties, this is not the case of the petitioner that there was any perversity, irregularity, illegality or impropriety in the enquiry. The petitioner is aggrieved by the order of the Director General of Police, whereby withholding one increment was enhanced to compulsory retirement from service looking the gravity of the offences committed by the petitioner.

22. For the reasons stated-above, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

1. (1979) 1 SCC 596
2. (2003) 4 SCC 557
3. (2005) 7 SCC 338
4. (2006) 2 SCC 541
5. (1996) 1 SCC 302

Thakur/Subbu